

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

MASSACHUSETTS DEVELOPMENT )  
FINANCE AGENCY )  
Plaintiff )

v. )

ADP MARSHALL, INC., a FLUOR )  
DANIEL COMPANY, and FIREMAN'S )  
FUND INSURANCE COMPANY )  
Defendants )

ADP MARSHALL, INC. )  
Plaintiff in Counterclaim )

v. )

MASSACHUSETTS DEVELOPMENT )  
FINANCE AGENCY )  
Defendant in Counterclaim )

ADP Marshall, Inc. )  
Third Party Plaintiff )

v. )

ALLIED CONSULTING ENGINEERING )  
SERVICES, INC. ANDOVER CONTROLS )  
CORPORATION, R & R WINDOW )  
CONTRACTORS, INC., AND DELTA )  
KEYSPAN, INC. N/K/A DELTA )  
KEYSPAN, LLC )  
Third Party Defendants )

C.A. No.: CV 10203 PBS

FILED  
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FEB 12 P 1:20  
DISTRICT COURT  
DISTRICT OF MASS.

**MASSACHUSETTS DEVELOPMENT FINANCE AGENCY'S**  
**ANSWER TO ADP MARSHALL, INC.'S COUNTERCLAIM**

The plaintiff, Massachusetts Development Finance Agency ("MDFA"), hereby responds to the Counterclaim of the defendant, ADP Marshall, Inc. ("ADP") as follows.

1. MDFA admits the allegations contained in Paragraph 1 of the Counterclaim.
2. MDFA admits the allegations contained in Paragraph 2 of the Counterclaim.
3. MDFA admits the allegations contained in Paragraph 3 of the Counterclaim.
4. MDFA denies the allegations contained in Paragraph 4 of the Counterclaim.

5. MDFA admits the allegations contained in Paragraph 5 of the Counterclaim.
6. MDFA admits that ADP brought a proceeding to adjudicate the backcharge before DALA, but denies the remaining allegations.
7. MDFA admits the allegations contained in Paragraph 7 of the Counterclaim.
8. MDFA admits the allegations contained in Paragraph 8 of the Counterclaim.
9. MDFA admits the allegations contained in Paragraph 9 of the Counterclaim.
10. MDFA admits the allegations contained in Paragraph 10 of the Counterclaim.
11. MDFA admits the allegations contained in Paragraph 11 of the Counterclaim.
12. MDFA admits the allegations contained in Paragraph 12 of the Counterclaim.
13. MDFA denies the allegations contained in Paragraph 13 of the Counterclaim.
14. MDFA denies the allegations contained in Paragraph 14 of the Counterclaim.
15. MDFA denies the allegations contained in Paragraph 15 of the Counterclaim.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

The Counterclaim fails to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

ADP failed to perform all of its obligations under the contract and, therefore, it cannot claim on the contract.

#### **THIRD AFFIRMATIVE DEFENSE**

ADP failed to substantially complete its work.

#### **FOURTH AFFIRMATIVE DEFENSE**

ADP materially breached the contract.

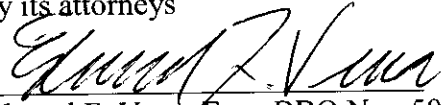
#### **FIFTH AFFIRMATIVE DEFENSE**

MDFA is entitled to offset.

**SECOND AFFIRMATIVE DEFENSE**

MDFA is entitled to setoff.

Respectfully Submitted,  
MASSACHUSETTS DEVELOPMENT  
FINANCE AGENCY,  
By its attorneys




Edward F. Vena, Esq., BBO No.: 508660  
Charles A. Plunkett, Esq., BBO No.: 547714  
VENA, RILEY, DEPTULA, LLP  
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Boston, MA 02210  
(617) 951-2400

Date: February 11, 2004

**CERTIFICATE OF SERVICE**

I, Edward F. Vena, Esquire, hereby certify that on this 11<sup>th</sup> day of February 2004, I mailed a copy of the foregoing, Massachusetts Development Finance Agency's Answer to ADP Marshall, Inc.'s Counterclaim, via first class mail, in a properly addressed postage paid envelope to the following parties:

Andrew J. Tine, Esquire  
Haese, LLC  
Attorneys at Law  
70 Franklin Street, 9<sup>th</sup> Floor  
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2004 FEB 12 PM 1:20 February 11, 2004

U.S. DISTRICT COURT  
DISTRICT OF MASS.

United States District Court  
Civil Clerk's Office  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way  
Boston, MA 02210

RE: Massachusetts Department Finance Agency v. ADP Marshall,  
Inc., a Fluor Daniel Company, and Fireman's Fund Insurance  
Company  
C/A No.: CV 10203 PBS  
VRD Reference No.: 213

Dear Sir/Madam:

Enclosed for filing in the above-entitled matter, please find  
Massachusetts Development Finance Agency's Answer to ADP  
Marshall, Inc.'s Counterclaim.

Thank you for your attention to this matter.

Very truly yours,

*Edward F. Vena*  
Edward F. Vena

EFV/sc  
Enclosures

cc: Andrew J. Tine, Esquire  
Suffolk Superior Court, Civil Clerk's Office